

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

Appellate Case No.: 4D18-0762
LT Case No: 502009CA040800XXXXMB AG

JEFFREY EPSTEIN,

Petitioner/Plaintiff,

v.

SCOTT ROTHSTEIN, individually, and
BRADLEY J. EDWARDS, individually,

Respondents/Defendants.

**PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT
BRADLEY J. EDWARDS' MOTION FOR PARTIAL RELIEF FROM STAY**

Petitioner, Jeffrey Epstein (Epstein), pursuant to Florida Rule of Appellate Procedure 9.300, responds in opposition to Respondent's, Bradley J. Edwards (Edwards), Motion for Partial Relief From Stay filed by Respondent, Bradley J. Edwards, on March 12, 2018, and states:

Introduction

Epstein opposes any modification of this Court's stay or relinquishment – even partial – from the appellate protection and important work this Court is undertaking. Edwards has cited no legal or factual record basis warranting the unusual request to piecemeal this matter with trial court rulings. This Court will not take a day longer than necessary to review and enforce the mandate of Florida

Rule of Civil Procedure 1.440 (petition for writ of mandamus) and determine if the severance of the interrelated and dependent actions should continue to one jury trial - as stipulated by the parties in the Joint Pretrial Stipulation (petition for writ of certiorari).

In fact, Epstein welcomes remand in due course so that the now *sealed* 47 exhibits (that total less than 100 pages) identified on a privilege log as communications between Edwards and other attorneys at the Rothstein firm, including Rothstein, and between Edwards and Paul Cassel (never any clients) can be appropriately and thoughtfully reviewed in camera following a specific request by Epstein and analysis of whether work product protection was waived by sharing with third parties, by issue injection, or an attorney's misuse of this protection. *Parrott v. Wilson*, 707 F.2d 1262, 1271 (11th Cir. 1983) ("in some circumstances, a lawyer's unprofessional conduct may vitiate the work product privilege.") As evidenced by the court filings attached¹, Epstein's counsel even before the hearing filed notice of "no-objection" to a temporary sealing, again stipulated during the hearing to the sealing of the two docket entries at issue, then fully cooperated with the "Agreed Order" over the weekend to be entered Monday morning directing the circuit court clerk to seal the two docket entries. The expedited relief sought is

¹ Exhibits A, D, and E.

wholly unwarranted and moot given that Epstein has responded to this request to relinquish – for no good cause - in less than the ten days allotted by appellate rule. This Court should deny Edwards’ request for partial relief from stay.

No Partial Relief from Stay is Warranted

Edwards makes the inaccurate and baseless leap that the trial court “determined that Epstein’s possession of those documents was unauthorized.” (Motion, p.3). This “determination” never happened. Edwards also labels the documents at issue as being attorney-client privileged materials – a finding also never reached by the trial court below and is defied by the documents themselves which a privilege log (factual issues still exist as to whether the privilege log is legally sufficient) that now identifies documents as from/to attorneys, not clients. Finally, Edwards mischaracterizes the trial court’s ruling of sealing the docket entries as “remedy[ing] that misconduct” because no such finding was ever made nor could it be made. In fact, it was Epstein who – even before the hearing – agreed to seal the documents by filing a Notice of No-Objection to Edwards Moving to Seal Court Records Until the Court Makes a Determination of How the Documents Shall be Treated. (Ex. A). At the hearing, Epstein’s counsel again stipulated to sealing the two docket entries at issue. (Ex. D, p. XX). Moreover, it was Epstein’s counsel without being required filed a Notice of Service of Court’s

March 8, 2018 Hearing Transcripts and *Compliance* with Court’s Rulings. (Ex. D). Finally, when Edwards failed to submit a written Order to the trial judge in order for the clerk to seal the two docket entries before this Court granted the emergency stay of proceedings, it was Epstein’s counsel who worked with opposing counsel over the weekend and appear at 8:30am before Judge Hafele in order to enter an Agreed Order so the clerk could seal and grant Edwards’ request that the documents not see the light of day through the press. (Ex. E).

To be clear, Epstein wants a full in camera review of the “materials” and hearing before the trial court to present law on the court’s duty to perform the review and analyze whether any privilege or protection existed in the first place, or was waived. Epstein and his counsel will wait until this Court renders its determination of the “at issue” appeal and the “bifurcation” appeal to seek the revelation and shine the public light on the *truth* through the now sealed 47 exhibits. Until that time, the trial court’s oral ruling – pursuant to Epstein’s stipulation - regarding sealing have been honored by Epstein and his counsel and no “partial relief from stay” is warranted.

No Expedited Consideration is Necessary

As the only basis for this unusual request, Edwards presents this Court with a vague reference to “new information on that subject is being obtained daily, and

there are some current disagreements” requiring relief from the trial court. (Motion, p.2). What new information could Edwards possibly be referring to when the trial court action is stayed? What disagreements could possibly exist? Edwards also carelessly concludes in his appellate filing that the “materials” were “improperly obtained by Epstein’s counsel.” (Motion, p.1). No such judicial determination has been made. Perhaps because the materials are so damning to Edwards’ case against Epstein, Edwards is focused on how the documents were obtained rather than what they say! In fact, they say volumes. The trial court recognized after getting a “flavor” for some of the documents– “...they are detrimental to the position taken by Mr. Edwards and that they are helpful to the position taken by Mr. Epstein.” (Afternoon, 51:23-52:5). Upon remand, the trial court will be expressly asked to perform its obligation to review the 47 exhibits in camera.

When Edwards made an allegation of improper behavior against Link & Rockenbach, PA, undersigned counsel immediately and clearly set out in two affidavits the (1) chain of custody establishing Link & Rockenbach, PA’s proper obtaining of the “materials” from Fowler White, Epstein’s prior counsel and (2) an opinion by ethics expert, Tim Chinaris, who had authored thousands of ethics opinions for over a decade for the Florida Bar as Ethics Director, that Mr. Link and

Ms. Rockenbach “acted in an ethically proper manner in this case regarding the documents in question” and “acted in an ethically proper manner by bringing the documents in question to the court’s attention.” (Ex. B; Ex. C, paragraphs 29, 31.)

As outlined above, it was *Epstein* who acted with alacrity once Edwards raised a sniff of potential “privilege” and served a “Notice of No Objection” to “Seal Court Records” until the trial judge had an opportunity to determine if, in fact, *any* attorney-client privilege or work product protection existed as to the 47 exhibits. It was *Epstein* and his undersigned counsel who, at the outset, redacted the names of Edwards’ three clients in the court filing despite Edwards’ naming them on his witness list without protection of their anonymity. It was *Epstein* and his undersigned counsel who expressly stipulated “no objection” at the March 8, 2018, hearing to allowing the clerk to seal the two docket entries at issue. (Afternoon session, 62:20-63:2). Finally, because there was no written order and the hearing contained multiple aspects, it was *Epstein* and his undersigned counsel who, though no court ruling required it, filed a Notice of Service of the March 8, 2018 Hearing Transcript and *Compliance with Court’s Rulings*. (Ex. D).

Edwards’ claim of urgency rings hollow. Notwithstanding, it is *Epstein* and his undersigned counsel who serve this response in less than the ten days allowed by appellate rules. Epstein and his counsel want this Court to grant writs of

certiorari and mandamus, order the trial court to follow the mandatory compliance with Rule 1.440, and proceed with one jury trial for Epstein's action and Edwards' counterclaim. Epstein looks forward to the in camera review he will seek from the trial court of the 47 exhibits under temporary seal. A party's right to bring to light the truth and obtain justice should always outweigh the urgency to finish a pending case.

Conclusion

There is no legitimate reason to modify this Court's stay and relinquish partial jurisdiction while this Court considers the significant and case-changing legal issues.

WHEREFORE, Petitioner, Jeffrey Epstein, respectfully requests that Respondent's Motion be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this request was furnished **via email** this ___ day of March, 2018:

LINK & ROCKENBACH, PA
1555 Palm Beach Lakes Boulevard
Suite 301
West Palm Beach, Florida 33401
[redacted] [fax]

By: __
Scott J. Link (FBN [redacted])
Kara Berard Rockenbach (FBN [redacted])
Rachel Jenny Glasser (FBN [redacted])
Primary: [redacted]
Primary: [redacted]
Primary: [redacted]
Secondary: [redacted]
Secondary: [redacted]
Secondary: [redacted]

Counsel for Petitioner, Jeffrey Epstein

[tina – exhibits:

- A. Epstein’s Notice of No Objection to Cassell or Edwards Moving to Seal Court Records Until the Court Makes a Determination of How the Documents Shall be Treated
- B. Affidavit of Tim Chinaris
- C. Affidavit of Tina Campbell
- D. Epstein’s Notice of Service of Court’s March 8, 2018 Hearing Transcripts and Compliance with Court’s Rulings.
- E. Agreed Order Directing the Clerk to Seal Filings